

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) Case No. 1:10-CV-1214 (GLS/RFT)
v.)
)
STATE OF NEW YORK and NEW)
YORK STATE BOARD OF ELECTIONS,)
)
)
Defendants.)
)
)
)

ORDER

In accordance with the Court's January 27, 2012 order, the Court hereby concludes that:

1. The United States filed this action on October 12, 2010, to remedy violations of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 ("UOCAVA"), 42 U.S.C. §§ 1973ff to 1973ff-7, as amended by the Military and Overseas Voter Empowerment Act, ("MOVE Act"), Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009).
2. UOCAVA guarantees active duty members of the uniformed services (and their spouses and dependents) and United States citizens residing overseas the right "to vote by absentee ballot in general, special, primary, and runoff elections for federal office." 42 U.S.C. § 1973ff-1.
3. New York is responsible for complying with UOCAVA and ensuring that validly-requested absentee ballots are sent to UOCAVA voters in accordance with its terms. 42 U.S.C. §§ 1973ff-1 & 1973ff-6(6).

4. New York failed to transmit all UOCAVA ballots in accordance with UOCAVA in the 2010 federal general election.

5. In the time since the 2010 federal general election, New York provided the United States and the Court with data concerning the transmission and receipt of UOCAVA ballots in that election in an effort to determine which, if any, voters were disenfranchised due to New York's failure to comply with UOCAVA.

6. At the present time, insufficient data has been obtained from the following 11 counties to determine whether UOCAVA voters in those counties were disenfranchised in the 2010 federal general election: Bronx, Kings, Nassau, New York, Niagara, Queens, Schenectady, Staten Island, Suffolk, Westchester, and Ulster.

Accordingly, it is ORDERED that:

(1) Within 7 days of this Order, the New York State Board of Elections ("NYSBOE") shall transmit the attached questionnaire to each county board of elections on the above list with instructions for the chief officials of each county board to certify the accuracy of the board's responses to the questionnaire.

(2) The parties shall administer the survey and take all other steps required by the Court in paragraphs (7) through (12) of the Court's January 27, 2012 order.

(3) To ensure New York's compliance with UOCAVA for the 2012 federal elections, and in accordance with paragraph (5) of the Court's January 27, 2012 order, the NYSBOE shall meet and confer with counsel for the United States 14 days and 7 days prior to each federal election in 2012 to provide the United States with a status update concerning New York's efforts to ensure UOCAVA compliance and the effectiveness of those efforts.

(4) To further ensure New York's compliance with UOCAVA for the 2012 federal elections, and in accordance with paragraph (5) of the Court's January 27, 2012 order, the NYSBOE shall file the following pre-election reports with counsel of record for the United States:

- a. Beginning the 55th day prior to each Federal election, survey each New York county to determine: (1) whether each county has received a sufficient number of printed absentee ballots sufficiently ahead of the 45-day mailing deadline to transmit those ballots as required by UOCAVA; (2) whether each county has the technical capacity to transmit all requested ballots by the requested method of transmission; (3) whether any county anticipates difficulties or a situation that would prevent it from transmitting all requested ballots to UOCAVA voters by the requested method of transmission and by the appropriate deadline; and (4) whether it would be appropriate for Defendants to provide additional support to any county to ensure that it meets the appropriate deadlines. Defendants shall provide the results of their survey to counsel for the United States in a format agreed to by the parties no later than 5:00 pm Eastern time on the 48th day before each Federal election.
- b. By the 45th day prior to each Federal election, obtain written or electronic certifications, in a format agreed to by the parties, of: (1) the number of absentee ballot applications received by each county on or before the 45th day before each Federal election from any voter entitled to vote pursuant to UOCAVA and the method of transmission requested; (2) the date on which the county began sending absentee ballots to those UOCAVA voters; (3) the

date on which and method of transmission by which the county completed sending those absentee ballots; and (4) an affirmative declaration that all UOCAVA ballots requested by the 45th day were transmitted by the 45th day by the requested method of transmission.

- c. Compile the data provided by the counties described in paragraph (4)(b) above into a spreadsheet format devised in consultation with the United States and transmit the spreadsheet electronically to counsel for the United States no later than 5:00 pm Eastern time on the 43rd day before each Federal election.
- d. Certify in writing to counsel for the United States that all of the data reported pursuant to paragraph (4)(b) of this Supplemental Decree is accurate to the best of their knowledge.
- e. Obtain written or electronic certifications, in a format agreed to by the parties, of: (1) the number of absentee ballot applications received by each county after the 45th day and on or before the 30th day before each Federal election from any voter entitled to vote pursuant to UOCAVA and the method of transmission requested; and (2) the date on which and method of transmission by which the county sent the requested ballots; and (3) an affirmative declaration that all UOCAVA ballots requested after the 45th day and on or before the 30th day were transmitted promptly by the requested method of transmission.
- f. Compile the data provided by the counties described in paragraph (4)(e) above into a spreadsheet format devised in consultation with the United States and

transmit the spreadsheet electronically to counsel for the United States no later than 5:00 pm Eastern time on the 29th day before each Federal election.

- g. Certify in writing to counsel for the United States that all of the data reported pursuant to paragraph (4)(e) of this Supplemental Decree is accurate to the best of their knowledge.

(5) Within two weeks of the date election results are certified for each federal election in 2012, NYSBOE shall file a report with counsel of record for the United States concerning the number of UOCAVA absentee ballots, by county, received and counted for each of those elections. The report will set forth the following information, by county, categorized by absent uniformed services voters with APO/FBP addresses or non-US street addresses; uniformed services voters at a street address within the US; and overseas civilian voters:

- a. The number of absentee ballots from UOCAVA voters received by local election officials before the close of business on the day of the final ballot receipt deadline for UOCAVA voters, as specified in N.Y. Election Law § 11-212, and counted;
- b. The number of absentee ballots from UOCAVA voters received after the close of business on the day of the final ballot receipt deadline for UOCAVA voters specified in N.Y. Election Law § 11-212; and
- c. The number of absentee ballots from UOCAVA voters that were not counted in the election for reasons other than late receipt, and the reasons such ballots were not counted.

(6) This Court shall retain jurisdiction to ensure additional relief as appropriate.

SO ORDERED.


GARY L. SHARPE
United States District Judge

Dated: February 14, 2012

Questionnaire

County: _____

Instructions: Each New York county board of elections must answer the following questions. The co-commissioners of the board must sign the responses to these questions and attest to their accuracy under penalty of perjury. Responses must be submitted to the New York State Board of Elections within 30 days of receiving this survey. Please attach additional sheets of paper if necessary to respond completely to each question. All responses will be filed by the State with the U.S. District Court for the Northern District of New York in connection with *United States v. New York, et al.*, No. 1:10-CV-1214 (GLS/RFT) (N.D.N.Y. filed Oct. 12, 2010).

Part I: UOCAVA Ballot Requests

1. Please provide the number of UOCAVA ballot requests received by your county prior to September 18, 2010: _____.
2. Please provide the number of UOCAVA ballot requests received by your county between September 18, 2010 and October 1, 2010: _____.
3. Please provide the number of UOCAVA ballot requests received by your county between October 1, 2010 and October 10, 2010: _____.
4. Please provide the number of UOCAVA ballot requests received by your county after October 10, 2010: _____.

Part II: UOCAVA Ballot Transmittals

1. Please provide the number of UOCAVA ballots that were transmitted to voters (including by electronic transmission) by October 1, 2010: _____.
2. Please provide the number of UOCAVA ballots that were transmitted to voters (including by electronic transmission) between October 1, 2010 and October 10, 2010: _____.
3. Please provide the number of UOCAVA ballots that were transmitted to voters (including by electronic transmission) after October 10, 2010: _____.
 - a. If ballots were transmitted after October 10, 2010, please provide the following:
 - i. The number of UOCAVA ballots transmitted after October 10, 2010 that were requested before October 10, 2010: _____.

- ii. The number of UOCAVA ballots transmitted after October 10, 2010 that were requested after October 10, 2010: _____.

Part III: UOCAVA Ballots Returned to the County

1. Please provide the number of UOCAVA ballots received by the county prior to November 2, 2010: _____.
2. Please provide the number of UOCAVA ballots received by the county between November 2, 2010 and November 24, 2010: _____.
3. Please provide the number of UOCAVA ballots received by the county after November 24, 2010: _____.

Part IV: Rejected UOCAVA Ballots

1. Please provide: a.) the number of UOCAVA ballots that were received prior to November 2, 2010 that were rejected and not counted: _____; and b.) the reason(s) for rejection of each of those ballots:

2. Please provide: a.) the number of UOCAVA ballots that were received between November 2, 2010 and November 24, 2010 that were rejected and not counted: _____; and b.) the reason(s) for rejection of each of those ballots:

3. Please provide the number of UOCAVA ballots that were received after November 24, 2010 that were rejected and not counted: _____.

- a. Were any ballots received after November 24, 2010 requested by October 10, 2010 and transmitted to the voter after that date? _____.
- i. If yes, please provide the number of such ballots: _____.
 - ii. If yes, please provide the number of such ballots that were not counted only because they were received after November 24, 2010: _____.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief:

Co-commissioner's signature: _____

Printed name: _____

Title: _____

Date: _____

Co-commissioner's signature: _____

Printed name: _____

Title: _____

Date: _____